point without, before arrival and delivery, is protected against the State's power to condemn it, being interstate commerce.

The Iowa mulct liquor law and anti-cigarette acts (see *Iowa v. McGregor,* 76 Fed. 956, and *McGregor v. Cone,* 104 Iowa 465; also *Lawrie v. Tennessee,* 82 Fed. 615, and *Austin v. State,* 101 Tenn. 563), being the parents of the Original Package cases, it would seem that the effect of these Express Company cases would be far reaching and practically final.

It was also lately decided in Iowa, *State v. Hanaphy,* 90 N. W. 601, that the law prohibiting a traveling salesman from soliciting or accepting orders to be filled by a foreign liquor house, the goods to be shipped C. O. D., was not within the scope of the Wilson Act and unconstitutional as infringing upon interstate commerce.

The lines are thus gradually being re-established in 'prohibition' States after the upheaval a few years ago caused by the Original Package decisions.

STATE ANTI-TRUST LEGISLATION.

The States are experiencing not a little difficulty with their anti-trust laws. While they unquestionably can, under their police power, pass laws against combinations for the purpose of monopoly and restraint of competition, still they have found it troublesome to determine just where to stop. On the one hand they can not make their laws so broad as to be oppressive and in violation of the freedom of contract guaranteed by the Constitution; on the other, they can not make them so narrow that they operate upon certain classes and exclude from their operation certain others, thus becoming discriminatory in violation of the Fourteenth Amendment. The tendency on the part of most of the State anti-trust laws thus far passed, is to exempt from their operation certain lines of trade and commerce peculiar to the particular locality. This tendency has proved fatal to the anti-trust laws of Texas, Nebraska and Illinois, which have all been declared unconstitutional substantially on the ground that they were discriminatory. Texas made an exemption in favor of the original producer or raiser of agricultural products or live stock; Nebraska undertook to exempt assemblies or associations of laboring men; and Illinois made its law not to apply to agricultural products and live stock in the hands of the raiser. *In re Grice,* 79 Fed. 627; *Ins. Co. v. Cornell,* 110 Fed. 816; *Connolly v. Union Sewer Pipe Co., 22* Sup. Ct. 431.

The Supreme Court of Kansas has lately, by a divided court, decided the anti-trust law of Kansas, passed in 1897, to be constitutional. This law is different from the three mentioned above, in that it makes no exception in favor of any specific kind of commerce. Hence the question as to whether it is constitutional or not depends upon whether or not it is too broad. In other words—whether or no it does not itself unreasonably restrain trade and violate freedom of contract. In deciding this the court had no starting point save that it is unquestionably within the power of

the State to prohibit the restriction of trade and competition. For, although the U. S. Supreme Court had occasion recently to pass upon the constitutionality of the Illinois anti-trust law in *Connelly v. Sewer Pipe Co.*, 22 Sup. Ct. 431, they failed to leave any guiding principle for such cases as this, being content to rest their decision solely upon the ground that the law was of a discriminatory character.

The law in question, after defining a trust, in the first section, to be "a combination of capital, skill or acts, by two or more persons, firms, corporations, or associations of persons, or either two or more of them, for either, any or all of the following purposes," makes substantially these specifications: First—The creation or operation of any restraint of commerce or trade, or any aids to commerce or trade. Second—A manipulation of prices of commodities, or control of rates or cost of insurance. Third—The prevention of competition either in trade, manufacture, transportation, or aids to commerce. Fourth—The control or increase of the price of commodities intended for public consumption. Fifth—The making or entering into any contract for any of these purposes, or in restraint of trade or competition generally. The second section of the act denies the right of any person to be interested directly or indirectly, either as principal, agent, representative, consignee, or otherwise, in a trust as defined in the first section. And subsequent sections make such interest criminal and prescribe penalties.

A careful examination of the court's opinion gives the impression that aside from its contention that the act should be limited in its operation according to the intention of the legislature, which was that it should not extend beyond constitutional bounds, and that objection to the constitutionality of a law can only be made by one to whom it applies, the court itself was not entirely satisfied that the act could be upheld. In fact, without this questionable rule of construction, it is difficult to see how the law could be sustained. It is too broad and sweeping in its effect. So much so that we think it would be open to the objections made in the Illinois case, *supra*. There, the court, to show that the statute was so broad as to be unreasonable and oppressive, said that under it, if valid, two village grocers doing business at a loss could not unite in a partnership to save themselves from ruin; two farmers could not, each having a half car-load of potatoes, join together to ship in one car to get a reduced rate, etc. These illustrations seem within dangerous proximity to the language of the Kansas statute. For instance: by the fifth specification of section one, a combination "by two or more persons," among other things, "to keep the price of such articles, commodities or transportation, at a fixed or graded figure; or by which they shall in any manner establish or settle the price of any article or commodity or transportation between them or between themselves and others, to preclude a free and unrestricted competition," etc., is prohibited. And if the Illinois case is good law, the Kansas statute is manifestly unconstitutional unless the

court's theory in construing the statute to be constitutional by limiting its operation, in spite of its language, to only those objects intended by the legislature, is correct.

It is a cardinal principle of construction that where part of a statute is constitutional and part unconstitutional, if separable, that which is constitutional will be upheld, provided enough is left to make the law enforceable. *State v. Copeland,* 3 R. I. 33; *Commonwealth v. Hitchings,* 5 Gray 485. But it may be well questioned as to how far a court may go in the application of this principle where the language and meaning of the statute are clear. Limitation of the operation of a law so that it will not extend beyond its constitutional bounds, can not properly be said to be separation. And an attempt at limitation in such a case is likely to result in the substitution of the judicial department of the government for the legislative. This point is discussed fully in *U. S. v. Reese,* 92 U. S. 214.

WHO IS A "TRADER" UNDER THE BANKRUPTCY ACT.

Who is a trader and what constitutes a trading has been the subject of much legal discussion during the past hundred and fifty years. These questions have arisen under the various English and United States bankruptcy acts, and have resulted in numerous decisions, which indicate their application to the various lines of industry.

To constitute a trading under the old English bankruptcy acts there must have been a buying and selling with a view to profit, with an intent to seek a living. Selling what you already possess or produce is not sufficient, nor is a single act of buying and selling enough, unless there is an intention to continue it. *Ex parte Moole,* 14 Ves. Jun. 603; *Parker v. Wells,* 1 T. R. 34; *Heannay v. Birch,* 3 Camp. 233; *Cooke,* 48, 73. A more modern and commercial definition of a trader is one who makes it his business to buy merchandise or things ordinarily the subject of commerce and traffic, and to sell the same for the purpose of making a profit. *In re Cowles,* 1 B. R. 42.

Some difficulty has arisen in defining "trading" and "mercantile pursuits" in section 4b of the 1898 bankruptcy act, and in applying that definition to determine its applicability to the business of buying and selling bonds, stocks and other securities. The recent case of *In re Surety and Guarantee Trust Co.,* Central Law Jour., Vol. 55, No. 18 (Oct. 31), decides that "trader" and "mercantile pursuits" are to be construed in their technical sense, and that the buying and selling of stocks is not a "trading pursuit" within the meaning of the act.

Among those who have been held to be "traders" within the meaning of the bankruptcy acts of 1841 and 1867 are the following: a baker, who buys flour, which he makes into bread, and sells the bread daily to his customers *(In re Cocks,* 3 Ben. 260); a man who boards horses *(In re Odell,* 9 Ben. 209); a saloonkeeper *(In re*